IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

WP(C).No. 29576 of 2007(U)

PETITIONERS:

1. **MOHAMMED SHAH, JAMMATH-UI-USTA, ALISSERY P.O., ALAPPUZHA.**
2. **M.RAMLATH BEEVI,JAMMATH-UI-USTA, ALISSERY P.O., ALAPPUZHA.**

BY ADV. SRI.B.KRISHNA MANI.

RESPONDENTS:

1. **THE STATE OF KERALA REPRESENTED BY CHIEF SECRETARY THIRUVANANTHAPURAM.**
2. **KERALA KHADI & VILLAGE INDUSTRIES BOARD, REPRESENTED BY ITS SECRETARY TRIVANDRUM.**
3. **KHADI & VILLAGE INDUSTRIES IRLA ROAD, VILLE PARLE-WEST, MUMBAI, REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER,**
4. **THE PROJECT OFFICER DISTRICT KHADI & VILLAGE INDUSTRIES OFFICE, MALAPPURAM, KERALA STATE.**
5. **DEPUTY TAHSILDAR (RR) AMBALAPPUZHA TALUK ALAPPUZHA DISTRICT.**

BY GOVT. PLEADER SRI. BEJOY CHANDRAN, ADV. SRI. K.P. HARISH.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V. GIRI ,J.

WP(C).NO.29576 of 2007

Dated this the 8th day of October, 2007

JUDGMENT

This writ petition is filed by husband and wife who are the President and a member of a Society registered under the Travancore Cochin Literary Scientific and Charitable Societies Act, essentially aggrieved by Ext.P7 notice dated 10.5.2007 issued under the Revenue Recovery Act. The only contention raised in this writ petition is that revenue recovery proceedings are barred by limitation in so far as the petitioners in their individual capacity are concerned.

2. I have heard the learned counsel for the petitioner and the learned Standing Counsel for the Khadi and Village Industries Board. I have disposed of today, a writ petition filed by the Society i.e.O.P.10324/1999, wherein it has been observed that there is no reason to interfere in the said writ petition wherein the Society had challenged the proceedings initiated by Khadi and Village Industries Board for recovery of an amount of Rs.36,87,890/=. In the present case, the petitioners have a contention that though they have made themselves personally liable for repayment of the loan, the personal liability was only for a period of one year from 1997 and that revenue recovery proceedings initiated in May 2007 is barred by limitation.

3.In my view, in circumstances where the President and members of the Society had apparently made themselves personally liable for

repayment of the loan, but take up a contention that recovery proceedings should not now be proceeded against them, because it is barred by limitation, the said contention, really, ought to be taken in a properly instituted civil suit. It is not for this Court in proceeding under Article 226 of the Constitution of India to adjudicate the disputed questions of fact as to whether the petitioners have personally bound themselves for the repayment of the loan availed by the Society and if so, what is the extent of the personal liability as such. The plea of limitation, under the provisions of the Limitation Act, essentially, arises in proceedings before the civil court where the disputed questions of fact including the extent of liability and determination of a question as to whether petitioners have in their personal capacity acknowledged the liability within the original period of limitation could be effectively adjudicated by the civil court. It is made clear that the petitioners will be entitled to pray for appropriate interim orders in such civil suit also. Mr.Krishna Moni learned counsel for the petitioner submits that it might be necessary to send notice under Section 80 of the Civil Procedure Code before properly instituting a suit with the recovery officials also on the party array on behalf of the first petitioner. He therefore prays that appropriate breathing time may be given to the petitioner to approach the civil court. Learned Standing Counsel submits that the second petitioner has already filed a civil suit, but no interim orders have been granted.

4 After having heard the learned counsel on both sides and in the facts and circumstances of the case, I direct that recovery proceedings pursuant to

Ext.P7, shall be kept in abeyance with regard to the person and personal assets of the petitioners for a period of 10 weeks from today provided the first petitioner pays an amount of Rs. 2 lakhs (Rupees Two Lakhs only) with the Khadi and Village Industries Board, the second respondent, within a period of two weeks from today. It is made clear that this direction is being given only to enable the petitioners to approach the civil court after complying with the provisions of Section 80 of the CPC (which might be required in the case of the second petitioner also), though the second petitioner has already approached the civil court and this direction need not be taken as an inclination on the part of the court to grant any interim relief as far as the petitioners are concerned. Subject to this direction, this writ petition is disposed of.

V. GIRI, JUDGE

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